



Davis Wright Tremain LLP

ANCHORAGE BELLEVILLE LOS ANGELES NEW YORK PORTLAND SAN FRANCISCO SEATTLE SHANGHAI WASHINGTON, D.C.

MICHAEL C. SLOAN
DIRECT (202) 828-9827
michaelsloan@dwt.com

SUITE 200
1919 PENNSYLVANIA AVE NW
WASHINGTON, DC 20006

TEL (202) 659-9750
FAX (202) 452-0067
www.dwt.com

March 5, 2007

FILED/ACCEPTED

MAR - 5 2007

REDACTED - FOR PUBLIC INSPECTION

Federal Communications Commission
Office of the Secretary

Marlene H. Dortch
Secretary
Federal Communications Commission
455 12th Street, SW
Washington, DC 20054

**Re: In the Matter of Petitions of the Verizon Telephone Companies for Forbearance
Pursuant to 47 U.S.C. §160(c) in the Boston, New York, Philadelphia, Pittsburgh,
Providence and Virginia Beach Metropolitan Statistical Areas
WC Docket No. 06-172**

Dear Ms. Dortch:

Enclosed for filing in the above proceeding, please find two (2) copies of the redacted Comments of Comcast Corporation, which has been filed electronically.

Also enclosed is a "Stamp and Return" copy of this letter which we ask be stamped with the FCC's date of filing and then returned to our messenger.

Thank you. If you have any questions, please call me at (202) 828-9827.

Very truly yours,

Davis Wright Tremain LLP

Michael C. Sloan

Enclosures

No. of Copies at 1
List ASOC

Before the
Federal Communications Commission
Washington D.C.

FILED/ACCEPTED

MAR - 5 2007

Federal Communications Commission
Office of the Secretary

In the Matter of
Petitions of the Verizon Telephone Companies
for Forbearance Pursuant to 47 U.S.C. §160(c)
in the Boston, New York, Philadelphia,
Pittsburgh, Providence and Virginia Beach
Metropolitan Statistical Areas

WC Docket No. 06-172

Comments of Comcast Corporation

Comcast Corporation ("Comcast") respectfully submits these comments on the petitions filed by Verizon Communications, Inc. ("Verizon") seeking forbearance from certain regulatory duties in the Philadelphia, Pittsburgh, and Boston Metropolitan Statistical Areas ("MSAs").¹

Comcast, through various subsidiaries, provides facilities-based voice services in the MSAs noted above. Comcast supports deregulation of communications markets, particularly where competition ensures that consumers and the public interest are protected. In addition, while Comcast purchases *interconnection* arrangements from Verizon at TELRIC rates under Section 251(c)(2) of the Act, Comcast does not purchase *unbundled network elements* ("UNEs") from Verizon – which are the focus of Verizon's forbearance request. As a result, Comcast would not be directly affected by a grant of

¹ Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. §160(c) in the Boston Metropolitan Statistical Area (filed September 6, 2006) ("*Boston Petition*"); Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. §160(c) in the Philadelphia Metropolitan Statistical Area (filed September 6, 2006) ("*Philadelphia Petition*"); Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. §160(c) in the Pittsburgh Metropolitan Statistical Area (filed September 6, 2006) ("*Pittsburgh Petition*"). Verizon has also sought forbearance, based on essentially identical grounds, in the New York, Providence, and Virginia Beach MSAs. These comments focus on the three noted MSAs because they are the markets in which Verizon has cited Comcast as a competitor.

REDACTED – FOR PUBLIC INSPECTION

Verizon's forbearance request.² Nevertheless, for the important reasons cited below, and in the interest of a complete decision-making record, Comcast submits these brief comments in opposition to Verizon's petitions.

Comcast concurs in the comments being filed in this matter by the National Cable and Telecommunications Association ("NCTA"). We file these separate comments to address Verizon's claims regarding competition it faces from Comcast. Specifically, Verizon claims in support of its Petitions that Comcast provides substantial retail-level competition to Verizon in both residential and business markets. Verizon's objective is to persuade the Commission that it faces so much retail competition that the Commission should forbear from applying certain Verizon regulatory duties – notably, the duty to provide loops and interoffice transport as UNEs at TELRIC rates.³

² Verizon asserts that it "seeks ... substantially the same regulatory relief" that Qwest received in Omaha. See *Philadelphia Petition* at 1, 4; *Boston Petition* at 1, 3; *Pittsburgh Petition* at 1, 3 (emphasis added). In the *Omaha Order*, the Commission granted limited relief pertaining to interstate switched access charges (including end-user charges), and service abandonment, see *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, 20 FCC Rcd 19415 (2005) ("*Omaha Order*") at ¶ 15. The Commission also granted relief – on a wire-center-by-wire-center basis – from Qwest's duty to provide unbundled loops and transport at TELRIC rates under Section 251(c)(3). *Omaha Order* at ¶ 57. The Commission did not remove any other of Qwest's regulatory duties under Sections 251(b) or 251(c), see *id.* at ¶¶ 7, 84-86 nor did it modify Qwest's duty to provide unbundled loops and transport under Sections 271, 201, and 202. *Id.* at ¶ 90 (noting refusal to forbear from Section 271 "checklist" obligations); ¶ 67 & n.184 (noting continued application of Sections 201 and 202); ¶ 80 & n.202 (same). For these reasons, Comcast understands that Section 251(c)(2) interconnection duties are not "on the table" in this proceeding, and, in any event, no relief from Verizon's *interconnection*-related obligations is justified.

³ Verizon's argument, essentially, is that if it faces enough competition at the retail level – as Qwest apparently did in Omaha – it is appropriate to remove certain of Verizon's wholesale-level regulatory duties. See *Omaha Order* at ¶ 43 (indicating that "a majority of customers" in some wire centers "have selected carriers other than Qwest"); *id.* at ¶¶ 67, 81 (Cox's demonstrated ability to entirely remove customers from Qwest's network creates an incentive for Qwest to treat its UNE-based rivals fairly, because those rivals would at least make some use of Qwest's network and so provide some revenue to Qwest).

Probably in recognition that facilities-based competition that Qwest faced from another cable company, Cox, was a compelling reason for the relief granted in Omaha, Verizon emphasizes the competition it allegedly faces from Comcast in Boston, Philadelphia, and Pittsburgh.⁴ Verizon's language is vague, and it conspicuously refrains from making specific claims of market share loss to Comcast or other competitors.⁵ However, Verizon implies that it has experienced substantial market share losses, including losses to Comcast.

Verizon is clearly exaggerating its case. Based on the *Omaha Order*, it appears that Cox's cable-based voice service may have captured 50% or more of the market.⁶ By contrast, the Commission's most recent statistical report shows that as of January 2006, ILECs in Massachusetts held a 76% market share, while ILECs in Pennsylvania held an 80% market share.⁷ So, in these markets, all CLECs combined – facilities-based and non-facilities-based – hold less than half the share that Cox held in Omaha. Moreover, even these lower figures significantly overstate the facilities-based competition Verizon faces, because the report from which they are taken treats resold ILEC lines, UNE-P (now “commercial arrangement”) lines, and UNE-L lines as among those “lost” by the

⁴ For example, in its *Philadelphia Petition*, Verizon discusses Comcast as a competitor on pages 1, 4-8, and 20-23, and in the accompanying affidavit of its witnesses at ¶¶ 7, 14-19, 22, 26, and 48. Comcast is similarly prominent in both the *Boston Petition* and the *Pittsburgh Petition*.

⁵ For example, Verizon repeatedly refers to services that Comcast and others “offer” in the marketplace, *see, e.g., Philadelphia Petition* at 1, 2, 4-5, and *passim*, without ever focusing on the important difference between where a competitor “offers” service versus what proportion of potential customers actually *take* service from entities other than Verizon. *See also Boston Petition* at 1, 2, 4-5 and *passim*; *Pittsburgh Petition* at 1, 2, 4, 6 and *passim*.

⁶ *See Qwest Order* at ¶ 43.

⁷ *See* Industry Analysis and Technology Division, Wireline Competition Bureau, *Trends in Telephone Service* (February 2007) at Table 8.6.

ILEC, even though the ILEC obviously provides the network functionality for them.⁸ Clearly, therefore, Verizon does not face competition from Comcast (or anyone else) in Boston, Philadelphia or Pittsburgh anything like Qwest faced in Omaha.

Figures specific to Comcast confirm this conclusion, beginning with the residential market. In the Boston MSA, Comcast serves only approximately **[Begin Proprietary] [End Proprietary]** percent of the homes it passes. In the Pittsburgh MSA the figure is a little less, **[Begin Proprietary] [End Proprietary]**. The figure for the Philadelphia MSA is similar. Comcast is proud of the success its voice services have achieved, and is optimistic that it will continue to win customers from Verizon. But Verizon must (and does) seek forbearance based on *present, not future*, competitive conditions, and in each of the noted MSAs, Comcast's penetration, measured in terms of homes passed, is far below the 50%+ market share loss suffered by Qwest in Omaha. And because Comcast does not pass all homes in an MSA, the figures above (based on homes passed) actually overstate Comcast's inroads into Verizon's market share.

Verizon also tries to create the impression that Comcast has a significant presence in the business and enterprise markets, but that too is an exaggeration. Comcast has provided some services to some business customers in the Boston, Pittsburgh and Philadelphia MSAs.⁹ However, despite Verizon's citation to aspirational statements by certain Comcast entities on their web sites,¹⁰ Comcast's actual number of business

⁸ *Id.* at page 8-1 (describing the term "CLEC").

⁹ Comcast's cable networks are primarily located in residential areas. To the extent that small business customers are located in those areas, Comcast of course makes its services -- including its voice services -- available to those entities. But, as noted below, such entities have not been a focus of Comcast's sales and marketing efforts until very recently.

¹⁰ See, e.g., *Philadelphia Petition* at 20-21; *Boston Petition* at 19-20.

customers is relatively small. Indeed, Comcast has not, to date, made any significant or sustained entry into the business market and enterprise markets. In fact, Comcast Chairman and CEO Brian L. Roberts explained at a recent securities analysts' conference that Comcast did not make substantial efforts to enter the business voice market until late in 2006.¹¹

Furthermore, Verizon obscures its continued dominance of both the residential and business markets by failing to provide competitive data at the wire center level – as required by the *Omaha Order*¹² and more recent forbearance decisions.¹³ At the same time, Verizon uses very careful language to suggest that it has presented wire-center-level data when, in fact, it has not.¹⁴

Wire-center-level data is important because competition for telephone service is geographically granular. Real facilities-based competition does not magically appear in an MSA, or a county, or a city. It appears because a facilities-based competitor like

¹¹ See Thompson StreetEvents, FINAL TRANSCRIPT CMCSA - Comcast Corporation at Citigroup 17th Annual Entertainment, Media and Telecommunications Conference (Event Date/Time: Jan. 09. 2007 / 4:30PM ET), at 4 (statements of Mr. Roberts) (“We offer no commercial phone basically in the Company until we got going here late in 2006”).

¹² See, e.g., *Omaha Order* at ¶ 23 (noting wire center data); ¶ 59 (granting relief with respect to only 9 specific wire centers out of 24 for which Qwest had sought relief).

¹³ See *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, Memorandum Opinion and Order, WC Docket 05-281, FCC 06-188 at ¶ 14 (Jan. 30, 2007).

¹⁴ Verizon does not provide data on the percentage of customers *served by competitors* in any of its wire centers. Instead, it calculates the percentage of customers *located in wire centers* where a competitor has at least one customer. See, e.g., *Philadelphia Petition* at 5-6 (emphasis added) (“cable companies in the Philadelphia MSA collectively provide voice service to residential customers in *wire centers* that account for at least [propriety] percent of Verizon's residential access lines in the MSA”). The fact that a high percentage of Verizon customers live in wire centers where Comcast or another cable operator has at least one customer says nothing about the degree to which cable operators have succeeded in making competitive inroads into either those wire centers or the market as a whole. Verizon makes the same carefully-worded claim with respect to business customers as well. See, e.g., *Philadelphia Petition* at 24.

Comcast actually builds out *facilities* – wires or fiber optic plant that is laboriously and expensively constructed, mile by mile, block by block, and, indeed, sometimes building by building¹⁵ – and then successfully uses those facilities to actually win customers from the incumbent. This is why the Commission relies on wire-center-level data in assessing forbearance requests.¹⁶ Verizon obviously understands this, so a reasonable conclusion, particularly in light of Verizon’s exaggeration of its market share losses noted above, is that wire-center-level data will show that Verizon’s competitive losses – to Comcast and others – are not nearly as extensive as Verizon would have the Commission believe.¹⁷

* * * * *

The discussion above shows that Verizon has greatly exaggerated its market share losses, and that those losses are far less than those experienced by Qwest in Omaha. This is fatal to Verizon’s forbearance case under Section 10 of the Act, 47 U.S.C. § 160. That provision allows forbearance if the Commission finds that (1) the regulation is not needed to ensure that “the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;” (2) the regulation is not needed to protect consumers; and (3) forbearance is consistent with the public

¹⁵ See United States Government Accountability Office, “Telecommunications: FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services,” GAO-07-80 (November 2006) (noting that obtaining access to specific buildings in order to offer competitive telecommunications services is often quite difficult or impossible even if the competitor has fiber facilities very near any particular building).

¹⁶ See, e.g., *Omaha Order* at ¶ 23 n.71. Qwest’s initial petition did not present wire-center level data, *id.* at ¶ 23, but that was not unreasonable because Qwest was pioneering the effort to seek significant relief from Section 251(c) duties. As the Omaha case unfolded, however, the need for wire-center data became clear, and the Commission relied on it extensively in its ruling. *Id.* at ¶ 59 (limiting relief to only 9 of the 24 wire centers for which Qwest originally sought it).

¹⁷ Verizon’s failure to present wire-center level data is, itself, a fully sufficient reason to deny Verizon’s petitions.

interest. 47 U.S.C. § 160(a). As to the public interest, the Commission must consider whether forbearance “will promote competitive market conditions” and “enhance competition among providers of telecommunications services.” 47 U.S.C. § 160(b).

The Commission found in the *Omaha Order* that truly substantial retail market share losses can justify relief from some wholesale-level regulatory obligations. The theory is that the ILEC will view rivals that rely on its wholesale services (that is, rivals using UNE-L or UNE-P-like arrangements) as potential – indeed, perhaps preferred – means of selling in the retail market.¹⁸ In the MSAs at issue here, however, it is clear that Verizon has not suffered the level of market share loss that would lead to such behavior. As a result, the Commission cannot grant Verizon’s petitions.

V. CONCLUSION.

Verizon’s petitions are based on the claim that it faces such a high level of retail competition – including competition from Comcast – that, like Qwest in Omaha, it should receive relief from certain UNE obligations. The facts do not bear out Verizon’s representations and implications about the amount of competition it faces – including competition from Comcast. While Comcast aspires to provide an increasing amount of facilities-based competition, its share of the residential and business markets in the subject MSAs remains small. Moreover, while relying heavily on the *Omaha Order*, it has failed to present competitive information at the wire center level which that ruling

¹⁸ See *Omaha Order* at ¶¶ 43, 81.

ultimately required. For all these reasons, the Commission should reject Verizon's forbearance petitions.

Respectfully submitted,

COMCAST CORPORATION

/s/ Joseph W. Waz

By: _____

Brian A. Rankin
Susan Jin Davis
Comcast Cable Communications, LLC
1500 Market Street
Philadelphia, PA 19102

Joseph W. Waz
Vice President, External Affairs
and Public Policy Counsel

James R. Coltharp
Mary P. McManus
Comcast Corporation
2001 Pennsylvania Avenue
Suite 500
Washington, DC 20006

Dated: March 5, 2007

REDACTED – FOR PUBLIC INSPECTION